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AT-TALĀQ

الطَّلَاق



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INTRODUCTION

Name

At-Talāq is not only the name of this Sūrah but also the title of its subject-matter, for it contains commandments about *Talāq* (divorce) itself. Ḥadrat 'Abdullah bin Mas'ūd has described it as Sūrah an-Nisā' al-quṣrā also, i.e. the shorter Sūrah an-Nisā'.

Period of Revelation

Ḥadrat 'Abdullah bin Mas'ūd has pointed out, and the internal evidence of the subject-matter of the Sūrah confirms the same, that it must have been sent down after those verses of Sūrah Al-Baqarah in which commandments concerning divorce were given for the first time. Although it is difficult to determine precisely what is its exact date of revelation, yet the traditions in any case indicate that when the people

started making errors in understanding the commandments of Sūrah Al-Baqarah, and practically also they began to commit mistakes. Allah sent down these instructions for their correction.

Theme and Subject Matter

In order to understand the commandments of this Sūrah, it would be useful to refresh one's memory about the instructions which have been given in the Qur'ān concerning divorce and the waiting-period (*'iddat*) above.

"Divorce may be pronounced twice; then the wife may either be kept back in fairness or allowed to separate in fairness." (Al-Baqarah: 229)

"And the divorced women (after the pronouncement of the divorce) must wait for three monthly courses ... and their husbands are fully entitled to take them back (as their wives) during this waiting-period, if they desire reconciliation." (Al-Baqarah, 228)

"Then, if the husband divorces his wife (for the third time), she shall not remain lawful for him after this divorce, unless she marries another husband ... " (Al-Baqarah: 230)

"When you marry the believing women, and then divorce them before you have touched them, they do not have to fulfil a waiting-period, the completion of which you may demand of them." (Al-Aḥzāb: 49)

"And if those of you who die, leave wives behind, the women should abstain (from marriage) for four months and ten days." (Al-Baqarah: 234)

The rules prescribed in these verses were as follows:

- (1) A man can pronounce at the most three divorces on his wife.
- (2) In case the husband has pronounced one or two divorces, he is entitled to keep the woman back as wife within the waiting-period and if after the expiry of the waiting-period the two desire to re-marry, they can remarry; there is no condition of legalisation (*tahliḷ*). But if the husband has pronounced three divorces, he forfeits his right to keep her as his wife within the

waiting-period, and they cannot remarry unless the woman remarries another husband and he subsequently divorces her of his own free will.

- (3) The waiting-period of the woman, who menstruates and marriage with whom has been consummated, is that she should pass three monthly courses. The waiting-period in case of one or two divorces is that the woman is still the legal wife of the husband and he can keep her back as his wife within the waiting-period. But if the husband has pronounced three divorces, this waiting-period cannot be taken advantage of for the purpose of reconciliation, but it is only meant to restrain the woman from re-marrying another person before it comes to an end.
- (4) There is no waiting-period for the woman, marriage with whom has not been consummated, and who is divorced even before she is touched. She can re-marry, if she likes, immediately after the divorce.
- (5) The waiting-period of the woman whose husband dies, is four months and ten days.

Here, one should understand well that Sūrah At-Ṭalāq was not sent down to annul any of these rules or amend it? but it was sent down for two purposes:

First, that the man who has been given the right to pronounce divorce should be taught such judicious methods of using this right as do not lead to separation, as far as possible; however, if separation does take place, it should only be in the case all possibilities of mutual reconciliation have been exhausted. For in the Divine Law provision for divorce has been made only as an unavoidable necessity; otherwise Allah does not approve that the marriage relationship that has been established between a man and a woman should ever break. The Holy Prophet (upon whom be Allah's peace) has said, "Allah has not made lawful anything more hateful in His sight than divorce." (Abū Da'ūd). And: "Of all the things permitted by the Law, the most hateful in the sight of Allah is the divorce." (Abū Da'ūd).

The second object was to complement this section of the family law of Islam by supplying answers to the questions that had remained

after the revelation of the commandments in Sūrah Al-Baqarah. So, answers have been supplied to the following questions: What would be the waiting-period of the women, marriage with whom has been consummated and who no longer menstruate, or those who have not yet menstruated, in case they are divorced? What would be the waiting-period of the woman, who is pregnant, or the woman whose husband dies, if she is divorced? And what arrangements would be made for the maintenance and lodging of the different categories of divorced women, and for the fosterage of the child whose parents have separated on account of a divorce?



يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا فَإِذَا هَلَغْنَ آجَلَهُنَّ فَامْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ قَارِئُوهُنَّ بِمَعْرُوفٍ وَاشْهَدُوا ذَوَى عَدْلٍ مِنْكُمْ وَاقْبِمُوا الشَّهَادَةَ لِلَّهِ ذَٰلِكُمْ يُوعَظُ بِهِ مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا^١ وَيَرْزُقْهُ مِنْ حَيْثُ لَا يَحْتَسِبُ^٢ وَمَنْ يَتَوَكَّلْ عَلَى اللَّهِ فَهُوَ حَسْبُهُ^٣ إِنَّ اللَّهَ بَالِغُ أَمْرِهِ^٤ قَدْ جَعَلَ اللَّهُ لِكُلِّ شَيْءٍ قَدْرًا^٥ وَالَّذِي يُبَيِّنُ

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Verses: 12

Revealed at Madīnah

In the name Allah, the Compassionate, the Merciful.

O Prophet, when you (and the believers) divorce women, divorce them for their prescribed waiting-periods,¹ and count the waiting-period accurately.² and fear Allah, you Lord. And do not turn them out of their houses (during the waiting-period), not should they themselves leave them,³ except in case they commit an open indecency.⁴ These are the bounds prescribed by Allah and whoever transgresses Allah's bounds will wrong his own self. You do not know: Allah may after this bring about a situation (of reconciliation).⁵ Then when they have reached the end of their (waiting) periods either retain them (in wedlock) in a fair manner or part with them in a fair manner,⁶ and call to witness two just men from among yourselves,⁷ and (O witnesses)

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bear witness equitably for the sake of Allah.

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With this you are admonished, (and) whoever believes in Allah and the Last Day.⁸ Whosoever fears Allah in whatever he does, Allah will open for him away out of the difficulties⁹ and will provide for him from whence he could little imagine.¹⁰ And whoever trusts in Allah, He is enough for him. Allah brings His decrees to fulfilment.¹¹ Allah has appointed a destiny for everything.

1. That is, "O believers, you should not make undue haste in the Matter of pronouncing divorce: your minor family quarrels should not so incite you that you should pronounce the final divorce in a fit of anger and there remains no chance for reconciliation. However When you have to divorce your wives, you should divorce them for their prescribed waiting-period." Pronouncing divorce for the waiting period has two meanings and both are implied here:

First, that "you should divorce them at a time when their waiting-period can begin." This thing has already been prescribed in Al Baqarah: 228 above. The waiting-period of the married woman who menstruates is three monthly courses after the pronouncement of divorce. If this commandment is kept in view the only appropriate time of pronouncing divorce so that the waiting period may duly begin is when she is not in her courses, for the waiting-period cannot begin from the course during which she may have been divorced, and divorcing her in that state would mean that, contrary to the Divine Command, her waiting-period should extend to four courses instead of three courses. Furthermore, this commandment also demands that the woman should not be divorced in the period-of purity during which the husband may have had sexual intercourse with her. For in this case, at the time divorce is pronounced neither the husband nor the wife can know whether he has conceived in consequence of the intercourse or not. Because of this neither the waiting-period can begin on the hypothesis that this would be reckoned in view of the succeeding monthly courses, nor on the hypothesis that this would be the waiting-period of a pregnant woman. So, this commandment lays down two rules simultaneously: first, that divorce should not be pronounced during menstruation; second, that divorce may be pronounced either in the period of purity during which there was no sexual intercourse with the woman, or in the state when the woman's being pregnant was known. A little consideration of the matter will show that the restrictions imposed on the pronouncement of divorce are for good reasons. The reason for imposing the restriction on the pronouncement of divorce during menstruation is that in this state the husband and the wife are somewhat estranged from each other because of the prohibition of sexual intercourse in this state; and from the medical viewpoint also it is confirmed that the woman is not temperamentally normal during the courses. Therefore, if a quarrel starts between

them in this state, both the husband and the wife would be helpless to an extent to put an end to it, and if the matter is deferred till the woman is free from her courses, there is the possibility that the woman also may return to her normal temperamental state and the mutual attraction that nature has placed between them also may work and reunite them. Likewise, the reason for prohibiting the pronouncement of divorce during the purity period in which sexual intercourse may have taken place, is that if in consequence of it conception takes place, it can neither be known to the husband nor to the wife. Therefore, it cannot be a suitable time for pronouncing the divorce. If the man comes to know that conception has taken place, he would think a hundred times before deciding finally whether he should pronounce divorce or not on the woman who carries his child in her womb. The woman also in view of the future of her child would try her best to remove the causes of her husband's displeasure. But if a decision is taken blindly, in undue haste, and then it is known that conception had taken place, both will regret it later.

This is the first meaning "divorcing for the prescribed waiting-period", which applies only to those women marriage with whom has been consummated, who menstruate and may possibly conceive. As for its second meaning it is this: "If you have to divorce your wives, you should divorce them till the expiry of their waiting-period". That is "Do not pronounce three divorces all at once leading to permanent separation, but pronounce one, or at the most two divorces, and wait till the end of the waiting period, so that there remains some chance for reconciliation for you at any time during this period." According to this meaning, this commandment is also useful in respect of those woman marriage with whom has been consummated and who menstruate as well as of those who no longer menstruate, or those who have not yet menstruated, or those whose pregnancy at the time of the pronouncement of divorce is known. If this Divine Command is rightly followed, no one will regret after having pronounced divorce, for if divorce is pronounced in this way, there remains room for reconciliation within the waiting period, and even after the expiry of the waiting-period the possibility remains that the separated husband and wife may remarry if they wish reconciliation.

This same meaning of *talâq-hanna li-'iddat-i hanna* ("divorce them for their prescribed waiting-period") has been given by the earliest commentators. Ibn 'Abbâs has given this commentary of it: "One should not pronounce divorce during menstruation, nor in the period of purity (*puhr*) during which the husband may have had sexual intercourse, but one should leave the wife alone till she attains purity after the course; then one may pronounce a single divorce on her. In this case even if there is no reconciliation and the waiting-period expires, she would be separated by the single divorce." (Ibn Jarîr) Hadrat 'Abdullah bin Mas'ûd says:

"Divorce for the waiting-period means that one should pronounce the divorce in the woman's state of purity without having had an intercourse with her." The same commentary has been reported from Ḥaḍrat 'Abdullah bin 'Umar, 'Atā', Mujaḥid, Maimun bin Maḥrān, Muqātil bin Ḥayyān, and Ḍaḥḥāk (may Allah bless them all) (Ibn Kathīr). 'Ikrimah has explained it thus: "One may pronounce the divorce in the state when the woman's being pregnant is known, and not when one has had sexual intercourse with her and it is not known whether she has conceived or not." (Ibn Kathīr) Both Ḥaḍrat Ḥasan Baṣrī and Ibn Sirīn say: "Divorce should be pronounced during the state of purity without having had sexual intercourse, or when the woman's being pregnant becomes known." (Ibn Jarīr)

The intention of this verse was best explained by the Holy Prophet (upon whom be Allah's peace) himself on the occasion when Ḥaḍrat 'Abdullah bin 'Umar had divorced his wife while she was discharging the menses. The details of this incident have been reported in almost all collections of *Ḥaḍīth* and the same, in fact, are the source of the law in this connection. It so happened that when Ḥaḍrat 'Abdullah divorced his wife while she was menstruating, Ḥaḍrat 'Umar came before the Holy Prophet and mentioned it to him. The Holy Prophet expressed great displeasure and said: "Command him to take her back and keep her as his wife till she is purified, then she again menstruates and is again purified; then if he so desires he may divorce her in her state of purity without having any sexual intercourse with her. This is the waiting-period which Allah Almighty has prescribed for the divorce of women." In a tradition the words are to the effect: "Either one may pronounce the divorce in the woman's state of purity without having a sexual intercourse, or in the state when her being pregnant becomes fully known."

The intention of this verse is further explained by a few other *Aḥaḍīth* which have been reported from the Holy Prophet (upon whom be Allah's peace) and some of the major Companions. Naṣā'ī has related that the Holy Prophet was informed that a person had pronounced three divorces on his wife in one sitting. He stood up in anger and said: "Are the people playing with the Book of Allah, although I am present among you?" Seeing the Holy Prophet's extreme anger on this occasion, a person asked: "Should I not go and kill the man?" 'Abdur Razzāq has reported about Ḥaḍrat 'Ubādah bin aṣ-Ṣāmit that his father pronounced one thousand divorces on his wife. He went before the Holy Prophet (upon whom be peace) and asked his ruling on it. The Holy Prophet said: "By the three divorces the woman stood separated from him along with Allah's disobedience, and 997 pronouncements remained as acts of injustice and sin, for which Allah might punish him if He so willed and forgive him if He so willed." In the details of the incident concerning Ḥaḍrat 'Abdullah bin 'Umar, which have been related in *Dāraquṭnī* and *Ibn Abī Shaibah*, another thing also is that when the Holy Prophet

commanded Ḥaḍrat 'Abdullah bin 'Umar to take his wife back, he asked: Had I pronounced three divorces on her, could I have taken her back even then? The Holy Prophet replied: No, she would have stood separated from you, and this would have been an act of sin." In another tradition the Holy Prophet's words are to the effect: "Had you done this, you would have committed disobedience of your Lord while your wife would have been separated from you."

The legal rulings reported from the Companions in this regard are also in complete conformity with the Holy Prophet's injunctions. According to a tradition in *Mu'waṭṭā*, a person came to Ḥaḍrat 'Abdullah bin Mas'ud and said: "I have pronounced eight divorces on my wife. Ibn Mas'ud asked: What legal opinion have you been given in this regard? He said: I have been told that the woman stands separated from me. Ibn Mas'ud said: The people have said the right thing; the legal position is the same as they have told you." 'Abdur Razzāq has related from 'Alqamah that a person said to Ibn Mas'ud: "I have pronounced 99 divorces on my wife. He said: Three divorces separate her from you; the rest are (acts of sin) excesses." Waki' bin al-Jarrah in his *sunan* has reported this very viewpoint of both Ḥaḍrat 'Uthmān and Ḥaḍrat 'Alī. A person came to Ḥaḍrat 'Uthmān and said: "I have pronounced a thousand divorces on my wife-". He replied: "She stood separated from you by three divorces." When a similar problem was presented before Ḥaḍrat 'Alī he replied: "By three divorces she stood separated from you. You may distribute the rest of your pronouncements on the rest of your wives if you so like." Abū Da'ūd and Ibn Jarīr have related, with a little variation in wording, a tradition from Mujāhid, saying: "While I was sitting with Ibn Abbās, a person came and said: 'I have pronounced three divorces on my wife.' Ibn 'Abbās heard it but kept silent for so long that I thought he was perhaps going to return his wife to him. Then he said: 'One of you first commits the folly of pronouncing the divorces; then he comes and says: O Ibn 'Abbās, O Ibn 'Abbās! whereans Allah has said that whoever fears Him in whatever he does, He will open a way for him out of the difficulties. You did not fear Allah; now I do not find any way for you: you have disobeyed your Lord, and your wife stands separated from you.' Another tradition, which also has been reported from Mujāhid, and related with a little variation in wording in *mu'waṭṭā* and *Tafsīr* by Ibn Jarīr, says: "A person pronounced a hundred divorces on his wife; then he asked Ibn 'Abbās for his opinion. He replied: 'By three divorces she stood separated from you. With the other 97 you made a jest of the Revelations of Allah!' This is according to *Mu'waṭṭā*. According to Ibn Jarīr the words of Ibn 'Abbās were to the effect: "You disobeyed your Lord, and your wife stood separated from you, and you did not fear Allah that He might open a way for you out of the difficulty." Imām Tahāwī has related that a man came to Ibn 'Abbās and said: "My uncle has pronounced three divorces on his wife. He replied: Your uncle has disobeyed

Allah and committed a sin and followed Satan. Now, Allah has left no way open for him out of the difficulty." According to a tradition in Mu'watta and Abū Da'ūd, a man pronounced three divorces on his wife before the consummation of marriage, then desired to remarry her, and came out to know the legal aspect of the matter. The reporter of the *Ḥadīth*, Muḥammad bin Iyās bin Bakr, says "I accompanied him to Ibn 'Abbās and Abū Hurairah. The reply each one gave was 'You have let slip from your hand whatever opportunity was there for you.' " Zamakhsarī has stated in *al-Kashshaf* that Ḥadrat 'Umar used to hear the man who would pronounce three divorces on his wife (at one and the same time) and then would enforce his divorces. Sa'īd bin Maṣūūr has related this very thing from Ḥadrat Anas on sound authority. In this connection, the general opinion of the Companions which Ibn Abī Shalbāh and Imām Muḥammad have related from Ibrāhīm Nakha'ī (may Allah bless them) was "The Companions (may Allah be pleased with them) approved of this method that one may pronounce a single divorce on the wife and leave her alone till she completes three monthly courses." These are the words of Ibn Abī Shalbāh. The words of Imām Muḥammad are to the effect, "The approved method with them was that in the matter of divorce one should not exceed one divorce till the waiting-period is completed."

The detailed law that the jurists of Islam have compiled with the help of these *Aḥādīth* and traditions in the light of the abovementioned Qur'ānic verse, is as follows

- (1) The *Ḥanafīs* regard divorce as of three kinds: *Aḥsan*, *ḥasan*, and *bid'ī*. The *aḥsan* form of divorce is that one may pronounce only one divorce on one's wife during a *ṭuhr* (purity) period in which one must refrain from sexual intercourse and leave the wife to complete her waiting-period. The *ḥasan* form of divorce is that one may pronounce one divorce in each period of purity in this case pronouncement of three divorces, one each in three periods of purity, is also not against the Sharī'ah, although the best approved method is to pronounce only one divorce and leave the wife to complete her waiting-period. The *bid'ī* form of divorce is that one must pronounce three divorces in a single sitting, or pronounce three divorces at different times during the same period of purity, or pronounce divorce during menstruation, or pronounce it in the period of purity during which one has had a sexual intercourse. Of these whichever course one may adopt one will be guilty a sin. This is the law in respect of the woman Marriage with whom has been consummated and who has regular courses. As for the woman marriage with whom has not been consummated, she can be divorced both in the state of purity and during menstruation, and this is according to the *Shari'ah*. And if the woman is such a one marriage with whom has been consummated, who no longer menstruates, or the one who has not yet menstruated, she can be divorced even after the

sexual intercourse, for there is no chance of her being pregnant. And if the woman is pregnant, she also can be divorced after the sexual intercourse, for her pregnancy is already established. But the method of pronouncing divorce on these women according to the *Sunnah*, is that the divorce may be pronounced at the interval of one month in each case. However, the *aḥsan* method is that only one divorce may be pronounced and the woman left to complete her waiting-period. (*Hedāyah, fath al-Qadir, Ahkam al-Qur'an* (Al-Jaṣṣaṣ), 'Unḍat al-Qarī')

According to Imām Mālik also divorce is of three kinds *Sunni*, *bid'ī* *makrūh* and *bid'ī ḥaram*. The divorce according to the *Sunnah* is that a single divorce be pronounced on the woman marriage with whom has been consummate(1) and who menstruates, during her state of purity without having had sexual intercourse, and the woman be left to complete her waiting-period. The *bid'ī makrūh* form is that divorce be pronounced in the period of purity during which one may have had sexual intercourse, or more divorces than one be pronounced in the period of purity while there was no sexual intercourse, or three divorces be pronounced, one each in separate periods of purity within the waiting-period, or three divorces be pronounced all at once. And *bid'ī ḥaram* is that divorce be pronounced during menstruation. (*Hāshiyah ad-Diwāqī 'alal-Sharḥ-al-Kabir; Ibn al-'Arabī, Ahkam al-Qur'an*).

The authentic viewpoint of Imām Aḥmad bin Ḥanbal which is generally agreed upon by the Ḥanbalīs is: The approved method (i.e. the one according to the *Sunnah*) of divorcing a wife marriage with whom has been consummated and who menstruates, is that a single divorce be pronounced on her in her period of purity without having had sexual intercourse with her, and then she be left to complete her waiting-period. But if she is given three divorces, one each in three separate periods of purity or three divorces in one and the same period of purity, or divorced thrice at once, or divorced during the courses, or divorced in the period of purity during which the husband has had sexual intercourse and her being pregnant is not known, all these would be disapproved and forbidden forms of divorce. But if the woman is such that marriage with her has been consummated but who no longer menstruates, or such who has not yet menstruated, or is pregnant, in her case there is neither any difference of approved and disapproved with regard to time nor with regard to the number of divorces pronounced. (Al Inṣāf fī Ma'rifat-ar-Rajih min al-Khilāf 'alā Madhhab Aḥmad bin Ḥanbal)

According to Imām Shāfi'ī, in the matter of divorce the difference between the approved (i.e. according to the *Sunnah*) and the reprehensible (i.e. against the *Sunnah*) forms of divorce is only with regard to time and not with regard to number. That is, to pronounce divorce on a woman marriage with whom

has been consummated and who menstruates, during menstruation or to pronounce divorce on a woman, who can conceive, during such a period of purity in which the husband has had sexual intercourse with her and the woman's pregnancy is unknown, is disapproved and forbidden. As for the number, whether three divorces are pronounced at one time, or pronounced in the same period of purity or pronounced in separate periods of purity, they are not against the *Sunnah* in any case. In case the woman is such that marriage with her has not been consummated, or the one who no longer menstruates, or the one who has not yet menstruated, or the one whose being pregnant is known, there is no difference between the approved and the disapproved forms of divorce (*Mughnī al-Muhtāj*)

- (2) A divorce's being irregular, reprehensible, forbidden, or sinful with the four Imāms does not mean that it does not have effect. According to all the four Sunnī Schools, whether a divorce is pronounced during menstruation, or thrice at once, or pronounced in the period of purity during which the husband has had sexual intercourse and the woman's being pregnant is unknown, or pronounced in a manner disapproved by an Imām, in any case it does become effective, although the pronounce commits an act of sin. But some other scholars differ in this regard from the four Imāms.

Sa'ī bin al-Musayyab and some other immediate followers of the Companions say that the divorce of the person who pronounces it during menstruation, or pronounces it thrice at one time, does not take place at all. The same is the opinion of the Imāmiyah sect of the Shī'as. The basis of this opinion is that since this form of divorce is forbidden and utterly irregular, it is ineffective, whereas the *Aḥādīth* that we have cited above, clearly show that when Hadrat 'Abdullah bin 'Umar divorced his wife during menstruation, the Holy Prophet commanded him to take her back, had the divorce not taken effect at all, the command to take the wife back would have been meaningless. And this also is confirmed by many *Aḥādīth* that the Holy Prophet and the major Companions considered the pronounce of more divorces than one at one time sinful but did not regard his divorce as ineffective.

Ta'us and 'Ikrimah say that only one divorce takes place if divorce is pronounced thrice at once, and this very view has been adopted by Imām Ibn Taimiyyah. The source of his this opinion is that Abū az-Ṣahbā' asked Ibn 'Abbās "Don't you know that in the lifetime of the Holy Prophet (upon whom be Allah's peace) and Hadrat Abū Bakr and in the early period of Hadrat 'Umar a triple divorce was considered a single divorce? He replied: Yes." (Bukharī, Muslim). And in Muslim, Abū Da'ūd and Muslim Ahmad, Ibn Abbās's this statement has been cited "In the lifetime of the Holy Prophet (upon whom be peace) and Hadrat Abū Bakr and during the first two years of the caliphate of Hadrat 'Umar a triple

divorce was considered a single divorce. Then Hadrat 'Umar expressed the view: 'As the people have started acting hastily in a matter in which they had been advised to act judiciously and prudently, why should we not enforce this practice?' So, he enforced it."

But this view is not acceptable for several reasons. In the first place, according to several traditions Ibn 'Abbās's own ruling was against it, as we have explained above. Secondly, it is contrary to those *Aḥādīth* also, which have been reported from the Holy Prophet (upon whom be peace) and the major Companions, in which the ruling given about the pronouncement of a threefold divorce at one time is that all his three divorces become effective. These *Aḥādīth* also have been cited above. Thirdly, from Ibn 'Abbās's own tradition itself it becomes evident that Hadrat 'Umar had publicly enforced the triple divorce in the assembly of the Companions, but neither then nor after it the Companions ever expressed any difference of opinion. Now, can it be conceived that Hadrat 'Umar could decide an issue against the *Sunnah*? And could the Companions also accept his decision without protest? Furthermore, in the story concerning Rukānah bint 'Abd-i Yazīb, a tradition has been related by Abū Da'ūd, Tirmidhī, Ibn Mājah, Imām Shāfi'ī, Dārimī and Hākim, saying that when Rukānah pronounced three divorces on his wife in one and the same sitting, the Holy Prophet (upon whom be peace) asked him to state on oath whether his intention was to pronounce one divorce only, (That is, the two subsequent divorces were pronounced only to lay emphasis on the first divorce, the triple divorce was not intended to create separation permanently). And when he stated this on oath, the Holy Prophet gave him the right to take his wife back. This brings out the truth of the matter as to what kind of divorces were considered a single divorce in the earliest period of Islam. On this very basis, the interpreters of the *Ḥadīth* have explained the tradition of Ibn 'Abbās thus: 'As in the early period of Islam deceit and fraud in religious matters was almost unknown among the people, the statement of the pronouncer of a triple divorce was admitted that his real intention was to pronounce only a single divorce, and the two subsequent divorces had been pronounced only for the sake of emphasis. But when Hadrat 'Umar saw that the people first pronounced three divorces in haste and then presented the excuse of pronouncing them only for the sake of emphasis, he refused to accept this excuse. Imām Nawawī and Imām Subkī regard this as the best interpretation of the tradition from Ibn 'Abbās. Finally, there is disagreement in the traditions of Abū as-Sahbā' himself, which he has related concerning the saying of Ibn 'Abbās. Muslim, Abū Da'ūd and Nasā'ī have related from this same Abū as-Sahbā' another tradition, saying that on an enquiry by him Ibn 'Abbās said: 'When a person pronounced a threefold divorce on his wife before consummation of marriage, it was considered a single divorce in the lifetime of the Holy Prophet (upon whom be peace) and Hadrat Abū Bakr

and in the early period of Hadrat 'Umar." Thus, one and the same reporter has reported from Ibn 'Abbas traditions containing two divergent themes and this diversity weakens both the traditions.

- (3) As the Holy Prophet had commanded the pronouncer of the divorce during menstruation to take his wife back, the dispute has arisen among the jurists as to what is the exact sense of this command. Imām Abu Hanifah, Imām Shafe'i, Imām Ahmad, Imām Auzi'i, Ibn Abi Laila, Ishāq bin Rahawayh and Abū Thaur say that such a person would be commanded to take his wife back, but would not be compelled to do so (*'Undat al-Qāri*). The Hanafī viewpoint as stated in *Herthiyah* is that in this case taking the wife back is not only preferable but also obligatory. In *Mughni al-Muhtāj* the Shafe'i viewpoint has been stated to be that the approved (i.e. One according to *Sunnah*) method for the one who has pronounced divorces during menstruation, but has not pronounced a triple divorce, is that he should take his wife back, and should refrain from pronouncing divorce in the following period of purity, but should pronounce it, if he so likes, in the period of purity when the wife has become free from her next menstrual course and attained purity, so that his revocation of the divorce pronounced during menstruation is not taken in jest. The Hanbali viewpoint as presented in *Al-Inshāf* is that in this state it is preferable for the pronouncer of divorce to take his wife back. But Imām Mālik and his companions say that pronouncement of divorce during menstruation is a cognizable offence. Whether the woman makes a demand or not, it is in any case the duty of the ruler that if such an act of some one is brought to his notice, he must compel the person to take his wife back and should continue to press him till the end of the waiting-period, and if he refuses to take her back, he should imprison him, if he still refuses, he should beat him and if he still does not accede, the ruler should give his own decision, saying "I return your wife to you." And the ruler's this decision would be effective after which it would be lawful for the man to have sexual intercourse with the woman, whether he intends to take her back or not, for the ruler's intention represents his intention (*Hāshiyah ad-Dusuqī*). The Mālikis also say that if the person, who has taken his wife back willingly or unwillingly, after divorcing her during menstruation, has made up his mind to repudiate her, the preferable method for him is that he should refrain from divorcing her in the period of purity following the menstruation during which he divorced her, but should divorce her in the period of purity following the next menstruation. The prohibition to pronounce divorce in the period of purity following the menstruation in which divorce was pronounced, has been enjoined so that the return of the pronouncer during menstruation does not remain merely oral, but he should have sexual intercourse with the woman during the

period of purity. Then, since the pronouncement of divorce in the period of purity in which sexual intercourse has taken place is prohibited, the right time for pronouncing it is the following period of purity only (*Hashiyah ad-Dusūqī*).

- (4) As to the question, Till when has the pronouncer of one revocable divorce the power to take his wife back? difference of opinion has arisen among the jurists, and this difference has occurred on the question 'What do the words *thalāthata quru'* in or Al Baqarah: 228 imply 'three menstruation or three periods of purity?' According to Imam Shāfe'ī and Mālik, *qara'* implies a period of purity, and this view is held on the authority of Ḥadrat 'A'ishah, Ibn 'Umar and Zaid bin Thābit (may Allah be pleased with them). The Hanafī viewpoint is that *qara'* implies menstruation and the same is the authentic viewpoint of Imam Ahmad bin Hanbal too. This view is based on the authority of all the four rightly-guided Caliphs, Abdullah bin Mas'ūd, 'Abdullah bin 'Abbās, Ubayy bin Ka'b, Mu'adh bin Jahal, Abū ad-Dardā', 'Ubadah bin as-Sāmit and Abū Mūsā al-Ash'arī (may Allah be pleased with them). Imam Muhammad in his Mu'waṭṭā has cited a saying of Sha'bī, saying that he met thirteen of the Holy Prophet's Companions and they all held this same opinion, and this very view was adopted by many of the immediate followers of the Companions also.

On account of this difference of opinion, according to the Shāfe'īs and the Mālikīs, the waiting-period of the woman comes to an end as soon as she enters the third menstruation, and the man's power to take her back is terminated. And if the divorce has been pronounced during menstruation, this menstruation will not be counted towards the waiting-period but the waiting-period will come to an end as soon as the woman enters the fourth menstruation (*Mughnī al-Mulṭāḥ, Hashiyah ad-Dusūqī*). The Hanafī viewpoint is that if the menstrual discharge in the third menstruation stops after ten days, the waiting-period of the woman will come to an end with it whether she takes purification bath or not, and if the discharge ceases within less than ten days, the waiting-period will not come to an end until the woman has taken her purification bath, or until a Prayer time has passed. In case water is not available, according to Imam Abu Hanifah and Imam Abū Yūsuf, the man's right to return to her will be terminated, when she has performed her Prayer with *tayammum* (purification with dust), and, according to Imam Muhammad, as soon as she has performed *tayammum* itself (*Hedāyah*). Imam Ahmad's authentic viewpoint which is held by the majority of the Hanbalīs is that as long as the woman does not have her purification bath after the third menstruation, the man's right to return to her will remain. (*Al-Inṣāf*)

- 5) As for the question that is the method of taking the wife back? the jurists are agreed that the person, who has pronounced a revocable divorce on

his wife, can return to her whenever he likes before the expiration of the waiting-period, whether the woman is desirous of this or not, for the Qur'an says "Their husbands are best entitled to take them back as their wives during this waiting-period." (Al-Baqarah: 228) From this it can automatically be concluded that until the expiry of the waiting-period, the marriage tie remains intact and the husbands can take them back before they are separated absolutely and finally. In other words, taking the wife back does not mean renewal of marriage for which the woman's consent may be necessary. After being unanimous so far, the jurists about different opinions about the method of taking the wife back.

According to the Shāfi'is, return can take place only by the oral word, not by conduct. If the husband does not say with the tongue that he has taken the wife back, no act of intercourse or intimacy even if performed with the intention of resuming marital relationship, will be considered resumption of the relationship. Rather in this case seeking of every kind of enjoyment from the woman is unlawful even if it is without lust. But there is no bar on having sexual intercourse with the woman, who has been divorced revocably, for the scholars are not agreed on its being unlawful. However, the one who believes in its being unlawful will be punishable. Furthermore, according to the Shāfi'ī viewpoint, it is in any case incumbent to pay a proper or customary dower (*mahr Miṭhal*) in case the husband has intercourse with the wife whom he had divorced revocable, whether after it he takes her back orally or not. (*Mughni' al Muḥṭāj*).

The Mālikis say that return can be effected both orally and by conduct. If for the purpose of resumption by word of mouth the husband uses express words, the resumption will take place whether he intended it or not; even if he uttered express words of resumption in jest, these words would amount to return and resumption. But if the words are not express, they would be considered resumption of relationship only in case they were pronounced with the intimation of resumption. As for resumption by conduct, no act whether it is an act of intimacy or sexual intercourse, can be considered resumption as long as it has not been performed with the intention of the resumption of marital relation. (*Hāshiyah ad-Dūsūqī*, Ibn 'Arabī, *Aḥkām al-Qur'ān*).

As for resumption of relationship by the word of mouth, the Hanafi and the Ḥanbali viewpoint is the same as the Mālikī. As for resumption by conduct, the ruling of both the Schools, contrary to the Mālikis, is that if the husband performs sexual intercourse with the woman whom he has divorced revocable within the waiting-period, it would by itself amount to resumption whether there was the intention of resumption or not. However, the difference between the viewpoints of the two Schools is that according to the Ḥanafis every act of intimacy amounts to resumption even if it is of a lesser degree than sexual

intercourse whereas the Ḥanbalīs do not regard a mere act of intimacy as resumption of marital relationship. (*Hedayah, Faṭḥ al-Qadīr, 'Umdat al-Qārī, Al-Iṣāf*)

- (6) As for the consequences of *ṭalāq as-Sunnah* (regular form of divorce according to the *Sunnah*) and *ṭalāq al-bid'ī* (irregular form of divorce) the difference is this. In case one or two divorces have been pronounced, the divorced woman and her former husband can re-marry by mutual consent even if the waiting-period has expired. But if a man has pronounced three divorces, resumption of marital relation is neither possible within the waiting-period, nor after the expiry of the waiting period, unless, however, the woman marries another person, the marriage is duly contracted and consummated, and then either the second husband divorces her or dies, then if the woman and her former husband wish to re-marry by mutual consent, they can do so. In most collections of the *Aḥadīth* a tradition has been reported on sound authority, saying that the Holy Prophet (upon whom be Allah's peace) was asked, "A man pronounced three divorces on his wife, then the woman married another man and the two had privacy but there was no intercourse, then he divorced her. Now, can this woman re-marry her former husband? The Holy Prophet replied: "No, unless her second husband has enjoyed her just as her first husband had enjoyed her." As for the pre-arranged marriage (*ṭahill*) which is meant to legalise the woman for her former husband, so that she would marry another man, who would divorce her after having had sexual intercourse with her, this is invalid according to Imām Abū Yūsuf, and according to Imām Abū Ḥanīfah, the woman would become lawful for her former husband by this ceremony, but such a thing is reprehensible to the extent of being unlawful. Ḥadīrat 'Abdullah bin Mas'ūd has reported that the Holy Prophet (upon whom be Allah's peace) said: "Allah has cursed both the legaliser (*Muḥallil*) and the one for whom legalisation is performed (*muḥallil laḥū*)." (Tirmidhī, Nasa'ī) Ḥadīrat 'Uqbah bin 'Āmir says that the Holy Prophet (upon whom be Allah's peace) asked his Companions "Should I not tell you as to who is a hired bull?" The Companions said that he should. He said: "It is he who performs *ṭahill* (legalisation of marriage). Allah's curse falls both on the *muḥallil* (legaliser) and on the *mutahallil laḥū* (the one for whose sake marriage is legalised)." (Ibn Mājah, Dāraqutnī).

2 This Command is addressed to the men as well as the women and the people of their families. It means: "Do not treat divorce lightly, it is a grave matter, which gives birth to many legal questions for the man, the woman, their children and the people of their house. Therefore, when divorce is pronounced, its time and date should be remembered and also the state in which divorce was

pronounced on the woman; one should keep an accurate account of when the waiting period started, and when it would expire. On this reckoning will depend the determination of the following questions: Till when has the husband the power to take the wife back? Till when has he to keep her in the house? Till when is he bound to maintain her? Till when will he inherit the woman and the woman him? When will the woman be separated from him finally and obtain the right to remarry? And if this matter takes the shape of a law-suit, the court also in order to arrive at the correct decision, will need to know the correct date and time of pronouncing the divorce and the woman's state at the time, for without this information, it cannot give the right decision on the questions arising from the divorce in respect of the women who have been enjoyed, or not, pregnant, or not, who menstruate, or no longer menstruate, and who have been divorced revocably or irrevocably.

3. That is, "Neither should the man turn out the woman in anger, nor the woman herself should leave the house in anger and haste. The house is hers during the waiting-period, and both the man and the wife should live together so that advantage may be taken if there is any chance of reconciliation. If the divorce is revocable, the husband may at any time be inclined towards the wife, and the wife also may try to win the husband's pleasure by removing the causes of dispute and difference. If both stay together in the same house, there may appear many an occasion for reconciliation during the three months, or the three menstrual periods, or till child-birth in case of pregnancy. But if the man turns her out in angry haste, or the woman returns to her parents imprudently, chances of reconciliation diminish, and the divorce generally leads to permanent separation. That is why the jurists have even suggested that in case of a revocable divorce the woman should during her waiting-period adorn herself so as to attract the husband (*Hedāyah; Al-Insāf*).

The jurists are agreed that the revocably divorced woman has a right to lodging and maintenance during the waiting-period, and it is not lawful for the woman to leave the house without the husband's permission, nor is it lawful for the husband to turn her out of the house. If the husband turns her out he will be guilty of an act of sin and if the woman leaves of her own accord, she will not only commit a sin but will also forfeit her right to lodging and maintenance.

4. Several meanings of this have been given by different jurists. *Hadrat Hasan Basri*, *ʿĀmir Shaʿbī*, *Zaid bin Azlam*, *Dahhāk*, *Mujāhid*, *ʿIkrimah*, *Ibn Zaid*, *Hamnād* and *Lathī* say that it implies adultery. *Ibn ʿAbbās* says that it implies abusive language that the woman may continue to use against the husband and the people of his house even after the divorce, during the waiting-period. *Qatārah* says that it implies the woman's disobedient to her husband, that is, if the wife has been divorced because of her disobedience she may continue to be

disobedience to her husband even during the waiting-period. 'Abdullah bin 'Umar Suddī, Ibn as-Sa'ib and Ibrāhīm Nakha'ī say that this implies the woman's leaving the house of herself. That is, in their opinion the woman's leaving the house in the waiting-period by itself amounts to committing an open indecency, and the command "Nor should they themselves leave the house except in case they commit an open indecency," is an admonition of this nature. "Do not abuse others except in case you wish to be known as a discourteous person." According to the first three of these four viewpoints, "except in case" is related with "Do not turn them out of their houses," and the sentence means that if they are guilty of immorality or of using invectives or of disobedience, it would be lawful to turn them out of the houses, and according to the fourth view, it is related with "nor should they themselves leave their houses," and it means that if they leave their houses they would be guilty of open indecency.

5 Both these sentences refute the viewpoint of those who hold that divorce does not take place at all if it is pronounced during menstruation or thrice at once, and also the view of those who think that a triple divorce amounts to a single divorce. The question arises: If an irregular (*bid'ī*) divorce does not take place, or a triple divorce amounts to a single revocable divorce, what then is the need of saying: "Whoever transgresses the bounds set by Allah (i.e. the method taught by the *Sunnah*), would wrong his own self, and you do not know Allah may after this bring about a situation of reconciliation?" These two things would be meaningful only in case pronouncement of divorce against the method taught by the *Sunnah* should be harmful for which one may have to regret later and the pronouncement of a triple divorce at once may not leave any room for reconciliation, otherwise, obviously by pronouncing a divorce which does not take effect at all one does not transgress the bounds set by Allah, which may be regarded as wronging one's own self, and after a divorce which is in any case only revocable there does remain room for reconciliation, thus, there would be no need to say "Allah may after this bring about a situation of re-conciliation."

Here, one should again understand well the mutual relationship between vv 228-230 of Al-Baqarah and these verses of Surah At-Talāq. In Sūrah Al-Baqarah the number of divorces laid down is three of which after pronouncing the first two one retains the right to take one's wife back and the right to re-marry her in case the waiting-period has expired, without resort to legalisation (*tahlīl*), and if divorce is pronounced for the third time, the husband forfeits both these rights. These verses of Sūrah At-Talāq were not sent down to amend or cancel this rule out to teach the people how to use wisely the powers that they have been given to divorce their wives, which if used rightly could save homes from ruin, could protect the husband from remorse if he had pronounced a divorce, could provide him maximum opportunities for reconciliation, and even if separation had taken

place, could show him a way to reunite in marriage as a last resort if the couple so desired. But if a person happens to use these powers unwisely, in a wrong way, he could only be wronging his own self and wasting all opportunities for making amends. It is just like a father's giving three hundred rupees in his son's possession and telling him to spend the amount as he may like, then advising him to the effect, "Spend the money given to you carefully, at the right place, and piece meal, so that you may benefit by it fully, otherwise if you expend it unwisely and carelessly in wrong places, or expend the whole of it at once, you will incur losses, and then I would not give you any more." This advice would be meaningless if the father did not give the amount in the son's possession at all, so that if he had wanted to spend it in a wrong place, he should be powerless to spend it, or if he had wanted to spend the whole amount, he could only take out a part of it while the rest lay safe with him in any case. If the condition be such, there could obviously be no need for this kind of advice.

6 That is, "In case you have pronounced one or two revocable divorces, you should take a decision before the expiry of the waiting-period whether you would keep the wife in wedlock or send her away. If you decide to keep her, then you should keep her with honour and dignity and not with a view to tormenting and harassing her and getting another opportunity to prolong her waiting-period by divorcing her once again, and if you decide to part with her, then you should part with her gracefully, without indulging in any quarrel or vilification; if you still owe her the dower, or a part of it, pay it off, and give her something in addition also at her departure according to your means, as has been enjoined in Al-Baqarah 241. (For further explanation, see E.N. 86 of Al-Ah'āb)

7 Ibn 'Abbās says that this implies calling to witness two men both at divorce and at reconciliation (Ibn Jarīr). Ḥadīr 'Inrān bin Ḥuṣayn was asked: "A man divorced his wife and then took her back, but he neither called anybody to witness pronouncement of the divorce nor resumption of the relation." He replied: "You pronounced the divorce against the *Sunnah* and you took your wife back against the *Sunnah*. You should call to witness men both at divorce and at resumption of relation, and you should not commit this mistake again." (Abū Da'ūd, Ibn Mājah). But the four Sunnī Imāms are agreed that to call men to witness the divorce and the resumption and separation is no condition for these acts to be valid, so that if there was no witness, neither divorce should take place nor resumption should be valid nor separation. But this condition has been enjoined so that the parties may not deny any of the facts later and in case there was a dispute the matter might be settled early and any suspicions and doubts might also be removed. This Command is just like the Command, "Have witnesses in case of commercial transactions." (Al-Baqarah: 282) This does not mean that it is obligatory to have witnesses at business transactions, and if there

was no witness, the transaction would be invalid; but this is a wise instruction which has been given to prevent disputes and it is good to follow it. Likewise, in the case of divorce and resumption also although a person's act and conduct would be legally valid even without the witnesses, yet caution demands that whatever is done it should be witnessed, simultaneously or later, by two just men.

8 These words clearly show that the instructions given above are in the nature of advice and not law. If a man pronounces divorce against the approved method as explained above, or fails to reckon the waiting period accurately or expels the wife from the house without a good reason, or returns to her at the end of the waiting period only to harass her, or sends her away after a quarrel, or fails to call the men to witness the divorce, reconciliation, or separation, it will not affect the legal effects of divorce or reconciliation or separation at all. However, his acting against Allah's advice would be a proof that his heart was devoid of the true faith in Allah and the Last Day. That is why he adopted a course which a true believer would never adopt.

9 The context itself shows that here "fearing Allah in whatever one does" means to pronounce divorce in accordance with the approved method taught by the *Sunnah*, to reckon the waiting period accurately, to avoid turning the wife out of the house, to take the wife back if one decides to keep her, at the expiry of the waiting-period with the intention of keeping her equitably and to send her away in a fair manner if one decides to part with her, and to call two just men to witness the divorce, reconciliation or separation, as the case be. In respect of this, Allah says that whoever acts in fear of Him, He will open for him a way out of the difficulties. This automatically gives the meaning that whoever does not fear Allah in these matters, will create for himself such complications and difficulties from which he will find no way out.

A study of these words clearly shows that the view of those who hold that the irregular (*bid'i*) form of divorce does not take place at all, and of those who regard a triple divorce pronounced at once or during the same period of purity as a single divorce, is not correct. For if an irregular form of divorce does not take place at all, it does not create any complication from which one may have to find a way out; and if only a single divorce takes place when one has pronounced three divorces at once, then also there arises no need for a person to seek a way out of a difficulty or complication.

10 It means "Keeping the divorced wife in the house during the waiting period, to maintain her and to pay her the dower, or something in addition, at departure certainly burdens a man financially. To spend on a woman whom one

مِنْ أَنْحِضٍ مِنْ نُسَايَكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُمْ ثَلَاثَةُ أَشْهُرٍ وَالْأُولَى لَكُمْ
 يَحْضَنَ وَأُولَئِكَ الْأَحْصَالِ أَجَلُهُمْ أَنْ يَضَعْنَ حَمْلَهُمْ وَمَنْ يَتَّقِ اللَّهَ
 يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا ^٤ ذَلِكَ أَمْرُ اللَّهِ أَنْزَلَهُ إِلَيْكُمْ وَمَنْ يَتَّقِ اللَّهَ
 يَكْفِرْ عَنْهُ سَيِّئَاتِهِ وَيُعْظِمْ لَهُ أَجْرًا ^٥ أَنْتُمْ كُنتُمْ مِنْ حَيْثُ سَكَنْتُمْ مِنْ
 وَجْهِكُمْ وَلَا تُضَارُّوهُمْ لِنُضَيْقِمْ عَلَيْهِمْ وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا
 عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَارْتَضُوا لَهُنَّ أَجُورَهُنَّ وَأَنْتُمْ
 بِبَيْتِكُمْ مَتَرُوفُونَ وَإِنْ تَعَاَسَرْتُمُو فَاسْتَخِذُوا لَهُ أُخْرَى ^٦ لِيُنْفِقَ ذُو سَعَةٍ مِنْ
 سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يَجْعَلِ اللَّهُ لِلنَّاسِ
 إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا ^٧ وَكَانَ مِنْ قُرْبَى عَمَّتِ
 عَنْ أَمْرِ رَبِّهَا وَرَسُولِهِ كَحَسْبِنَا حَسَابًا شَدِيدًا وَعَنْهَا عَذَابٌ مُكْرَاهٌ فَذَاقَتْ
 وَبَالَ أَمْرِهَا وَكَانَ عَامِلَهُ أَمْرُهَا خُسْرًا ^٨ أَعَدَّ اللَّهُ لَهُمْ عَذَابًا شَدِيدًا فَاثْقُوا
 اللَّهُ يَأُولَى الْأَلْبَابِ الَّذِينَ آمَنُوا قَدْ أَنْزَلَ اللَّهُ إِلَيْكُمْ ^٩ وَكَرَاهِيَةً يُتْلَا
 عَلَيْكُمْ آيَاتِ اللَّهِ مُبَيِّنَاتٍ لِيُخْرِجَ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ مِنَ الظُّلُمَاتِ
 إِلَى النُّورِ وَمَنْ يُؤْمِنْ بِاللَّهِ وَيَعْمَلْ صَالِحًا يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ
 تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا أَبَدًا قَدْ أَحْسَنَ اللَّهُ لَهُ رِزْقًا ^{١٠} اللَّهُ الَّذِي
 خَلَقَ سَبْعَ سَمَاوَاتٍ وَمِنْ الْأَرْضِ مِثْلَهُنَّ يَتَنَزَّلُ الْأَمْرُ بَيْنَهُنَّ لِتَعْلَمُوا
 أَنَّ اللَّهَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ وَأَنَّ اللَّهَ قَدْ أَحَاطَ بِكُلِّ شَيْءٍ عِلْمًا ^{١١}



And if you are in doubt about those of your women who have 4-5
despaired of menstruation, (you should know that) their waiting-period
is three months,¹² and the same applies to those who have not
menstruated as yet.¹³ As for the pregnant women, their period ends
when they deliver their burden.¹⁴ Whoever fears Allah, He makes his
course easy for him. This is Allah's Command which He has sent down
to you. Whoever fears Allah, Allah will remove his evils from him and
will enhance his reward.¹⁵

Lodge them (in the waiting-period) where you yourselves live, 6
according to your means, and do not harass them so as to straiten
them. ⁶

And if they are pregnant, spend on them until they deliver their 6-7
burden.¹⁷ Then if they suckle (the child) for you, give them their
wages, and settle the question of wages) fairly by mutual consultation.¹⁸
But if you created difficulties for each other (concerning the question of
wages), then another woman would suckle the child.¹⁹ Let the rich man
spend according to his means and let the one whose means are
restricted, spend out of what Allah has given him. Allah does not
burden anyone with more than what He has given him. It may well be
that Allah brings about ease after hardship.

Many a settlement²⁰ has rebelled against the commandments of 8-11
its Lord and His Messengers, and We called it to stern account and
punished it severely. They tasted the evil results of their misdeeds and
consequently they have nothing but loss in store for them. Allah has
prepared from them a severe torment (in the Hereafter). So fear Allah.
O you men of understanding, who have believed, Allah has sent down
to you an Admonition, a Messenger ²¹ who recites to you Allah's
Revelations containing clear guidance, so that he may bring those who
have believed and done good deeds out of darknesses into light.²²
Whoever believes in Allah and does good deeds, Allah shall admit him
into Gardens underneath which conals will be flowing. They shall live
therein for ever. Allah has prepared for such a one an excellent
provision.

Allah is He Who created seven heavens and of the earth also 12
their like.²³ His Command descends among them. (This you are being
told) so that you may know that Allah has power over everything, and

that Allah's knowledge encompasses all.

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has already decided to stand away because of strained relations will surely be irksome, and if the man is also poor, this expenditure will further pinch him. But a man who fears Allah, should endure all this gracefully. Allah is not niggardly as the people are. If a person spends his wealth in accordance with His law, He will provide for him in a manner beyond all expectations."

11 That is, there is no power that can prevent Allah's decree from enforcement.

12 This is in respect of the women who no longer menstruate and have reached menopause because of age. Their waiting-period will be reckoned from the day divorce was pronounced on them and three months imply three lunar months. If divorce was pronounced at the commencement of the lunar month, it is agreed that the waiting-period will be reckoned with regard to the sighting of the new moon; and if it was pronounced somewhere in the middle of the month, according to Imâm Abû Hanîfah, three months will have to be completed reckoning each month of 30 days. (*Endü' as-Sandî*).

As for the women whose courses are irregular due to some reason, the jurists have held different opinions.

Hadrat Sa'id bin al-Mu'ayyab says that Hadrat 'Umar ruled "If the woman who has been divorced stops having menses after having them once or twice after the divorce, she will wait for 9 months. If signs of pregnancy appear, well and good, otherwise after the passage of 9 months, she should observe the waiting-period of three additional months. Then she would be lawful for marriage to another person.

Ibn 'Abbâs, Qatâdah and 'Ikrimah say that the waiting period of the woman who has not menstruated for a year, is three months.

Ta'ûs says that the waiting-period of the woman who menstruates once in a year, is three menstruations. This very opinion has been reported from Hadrat 'Uthman, Hadrat 'Alî and Hadrat Zaid bin Thâbit.

Imâm Mâlik relates that a person Habbân by name divorced his wife during the period when she was suckling her child. A year passed on it, but she did not have the menses. Then the man died. The divorced wife laid claim to inheritance. The case came before Hadrat 'Uthman. He consulted with Hadrat 'Alî and Hadrat Zaid bin Thâbit, and gave the decision that the woman was an heiress. The argument given was that the woman was neither of those women who might have ~~disappeared~~ of menstruation, nor of those girls who may not have

menstruated yet therefore, up till the husband's death she was on the menses she had discharged last, and had still to pass her waiting period.

The Hanafis say that the waiting-period of the woman, who no longer menstruates, which may not be on account of menopause so that there may be no hope of her having it later will either be reckoned from the menstruation if she has it in the future, or in accordance with the age at which women generally reach menopause, and after attaining that age she will pass three months of the waiting period in order to be released from the marriage bond. The same opinion is held by Imam Shafe'i, Imam Thauri and Imam Laith, and the same also is the view of Hadrat 'Umar, Hadrat 'Uthman and Hadrat Zaid bin Thābit.

Imam Mālik has adopted the view of Hadrat 'Umar and Hadrat 'Abdullah bin 'Abbas and it is this. The woman will first pass nine months. If she does not have her menses during this period, she will pass three months of the waiting-period like the woman who has despaired of menstruation. Ibn al-Qāsim explaining the viewpoint of Imam Mālik says. The period of nine months will be reckoned from the day she became free from the previous menstrual discharge and not from the day divorce was pronounced on her. (All these have been taken from al-Jaqqāh, Ahkām al-Qur'ān and al-Kasānī. Badā'i as-Sanā'i).

Imam Ahmad bin Hanbal says that if the woman whose waiting-period started from menstruation despairs of menstruation during the waiting-period, she will be required to pass the waiting period of the menopausal woman and not of the women who menstruate regularly. And if she stops menstruating and the cause of the cessation is unknown, she will first pass nine months in the doubt of pregnancy, and then will have to complete three months of the waiting-period. And if the cause of the cessation of the menses becomes known, e.g. a disease, or suckling, or some other cause, she will lie in the waiting period till the time that either she starts having the menses again so that the waiting period may be reckoned in accordance with the courses, or she reaches menopause and may pass the waiting-period of the menopausal woman (Al Inshāf).

13 They may not have menstruated as yet either because of young age, or delayed menstrual discharge as it happens in the case of some women, or because of no discharge at all throughout life which, though rare, may also be the case. In any case, the waiting period of such a woman is the same as of the woman, who has stopped menstruation, that is three months from the time divorce was pronounced.

Here, one should bear in mind the fact that according to the explanations given in the Qur'ān the question of the waiting period arises in respect of the women with whom marriage may have been consummated, for there is no waiting-period in case divorce is pronounced before the consummation of

marriage (Al-Ahzab: 49) Therefore, making mention of the waiting period for the girls who have not yet menstruated, clearly proves that it is not only permissible to give away the girl in marriage at this age but it is also permissible for the husband to consummate marriage with her. Now, obviously no Muslim has the right to forbid a thing which the Qur'an has held as permissible.

The girl who is divorced in the state when she has not yet menstruated and then she starts having the menses during the waiting period, will reckon her waiting-period from the same menstruation, and her waiting-period will be reckoned just like the woman who menstruates regularly.

14 The consensus of scholarly opinion is that the waiting-period of the pregnant divorced woman is till child birth. But a difference of opinion has occurred about whether the same also applies to the woman whose husband may die during her pregnancy. The dispute has arisen because in Al-Baqarah: 234 the waiting-period of the woman whose husband dies has been laid down as four months and ten days, and there is no mention whatever whether this injunction applies to all widows generally or only to those who are not pregnant.

Haqrat 'Ali and Haqrat 'Abdullah bin 'Abbās, reading both these verses together, have drawn the rule that the waiting-period of the pregnant divorced woman is till child-birth, but that of the pregnant widow is the longer of the two periods, whether it be of the divorced woman or of the pregnant woman. For example, if delivery takes place before four months and ten days, she will have to observe a waiting period of four months and ten days, and if it does not take place till then, her waiting period will come to an end at delivery. The same is the viewpoint of the Imāmah sect of the Shī'as.

Haqrat 'Abdullah bin Mas'ūd says that this verse of Sūrah At-Talāq was sent down after the verse of Sūrah Al-Baqarah; therefore, the later injunction has made the earlier injunction particularly applicable to the non pregnant widow, and has laid down the waiting period of every pregnant woman as till child birth, whether she is divorced or widowed. Accordingly, whether delivery takes place immediately after the husband's death, or takes longer than four months and ten days, the woman's waiting-period in any case will come to an end at the birth of the child. This view is supported by this tradition of Haqrat Ubayy bin Ka'b. He says, "When this verse of Sūrah At-Talāq came down, I asked the Holy Prophet (upon whom be Allah's peace), 'Is it both for the divorced woman and for the widow?' The Holy Prophet replied, 'Yes.'" In another tradition the Holy Prophet further explained it thus: "The waiting-period of every pregnant woman is till child birth." (Ibn Jarir, Ibn Abū Hatim. Ibn Hajar says that although its reliability is questionable, yet as it has been related through several chains of transmitters, one has to admit that it has some basis). More than that, it is further confirmed by

the incident concerning Subai'ah-r'Aslamīyyah, which occurred in the sacred time of the Holy Prophet (upon whom be Allah's peace) himself. She became a widow during her pregnancy and a few days after her husband's death (according to some traditions 20 days, according to others 23 days, 25 days, 40 days or 35 days) she delivered her burden. The Holy Prophet was asked for his ruling concerning her and he permitted her to re-marry. This incident has been related by Bukhārī and Muslim in different ways on the authority of Ḥadrat Umm Salamah. This same incident has been related by Bukhārī Muslim, Imam Ahmad, Abū Da'ūd, Nasā'ī and Ibn Majah with different chains of transmitters on the authority of Ḥadrat Miswar bin Makhramah also. Muslim has cited this statement of Subai'ah-r'Aslamīyyah herself: "I was the wife of Ḥadrat Sa'd bin Khawalah. He died during the Farewell Pilgrimage when I was pregnant. A few days after his death I gave birth to a child. A man told me that I could not remarry before the expiry of four months and ten days. I went and asked the Holy Prophet (upon whom be Allah's peace) and he gave the verdict: 'You have become lawful as soon as you gave birth to the child you can re-marry if you so like.' " This tradition has been related briefly by Bukhārī also.

This same viewpoint has been reported from a large number of the Companions. Imam Mālik, Imam Shāfi'ī, 'Abdur Razzāq, Ibn Abī Shābah and Ibn al-Mundhir have related that when Ḥadrat 'Abdullah bin 'Umar was asked concerning the pregnant widow, he replied that her waiting-period is till childbirth. At this a man from among the Anṣār confirmed, saying: "Ḥadrat 'Umar had said that even if the deceased husband had not yet been buried, and his body still lay on bed in the house and his wife gave birth to a child, she would become pure and lawful for remarriage." The same opinion was held by Ḥadrat Abū Hurairah, Ḥadrat Abū Manjūr Badrī and Ḥadrat 'Ā'ishah, and the same has been adopted by the four Sunnī Imāms and the other early jurists.

The Shāfi'īs say that if the pregnant woman has more children than one in her womb, her waiting-period will come to an end at the birth of the last child, even if it is still born, the waiting period will expire at its birth. In case of abortion, if the mid-wives, on the basis of their knowledge and experience, state that it was not merely a piece of flesh but had human form, or that it was not a tumour but a human embryo, their statement will be admitted and the waiting period will expire. (*Mughnī al-Muhtāj*). The viewpoint of the Ḥanbalīs and the Ḥanafīs is also very close to it. But in case of abortion, their viewpoint is that unless the human form is clearly visible, the mid-wives' statement that it is human embryo will not be admitted and this will not bring the waiting period to an end. (*Badā'ī-us-Sana'ī, Al-Inṣāf*). But in the modern times by means of medical investigation it can be easily ascertained whether what has been expelled from the womb was actually something of the nature of human foetus or a kind of tumour.

or coagulated blood. Therefore, whenever it is possible to obtain expert medical opinion, it can be easily decided whether what is described as abortion, was really abortion or not, and whether it has brought the waiting-period to an end or not. However, in cases where such medical investigation is not possible the viewpoint of the Hanbalis and the Hanafis itself is preferable and it is not fit to rely on the ignorant mid-wives.

15 Although this is a general exhortation which applies to all matters and conditions of human life, yet in this particular context the object is to warn the Muslims to follow the Commands mentioned above in fear of God, no matter what responsibilities they may have to shoulder in consequence thereof, for as a reward for this Allah will remove their ills and will forgive their sins and will enhance their rewards in the Hereafter. Obviously, the waiting-period of the divorced woman whose term has been prescribed as three months, will be longer than that of the woman whose term has been appointed as three menstruations, and the term of the pregnant woman may be several months longer. To shoulder the responsibility of the maintenance and lodging of the woman whom a man may have decided to give up, during this whole period, will be an unbearable burden for the people, but Allah's promise is that He will lighten the burden that is borne in fear of Him and in following His Command, by His special bounty and grace, and will reward the person much more generously and richly in comparison to the small burden borne by him in the world.

16 The jurists are agreed that if the woman has been divorced revocable, the husband is responsible for her lodging and maintenance, they are also agreed that if the woman is pregnant, the husband will bear the responsibility of her lodging and maintenance till child-birth whether she has been divorced revocable or irrevocably. However, the difference of opinion has arisen about whether the non-pregnant woman who has been divorced irrevocably is entitled to both lodging and maintenance, or only to lodging, or to neither.

One group says that she is entitled to both lodging and maintenance. This is the opinion of Hadrat 'Umar, Hadrat 'Abdullah bin Mas'ud, Hadrat 'Ali bin Husam (Imam Zain al-'Abidin), Qadi Shurrah and Ibrahim Nakha'i. The same has been adopted by the Hanafis, and the same also is the viewpoint of Imam Sufyan Thauri and Hasan bin Saleh. This is supported by the *Hadith* of Daraqutni in which Hadrat 'Abdullah bin Jābir reports that the Holy Prophet (upon whom be peace) said, "The woman who has been divorced thrice has a right to lodging and maintenance during the waiting-period." This is further supported by those traditions in which it has been reported that Hadrat 'Umar had rejected the *Hadith* of Fāimah bint-Qais, saying: "We cannot abandon the Book of Allah and the *Sunnah* of our Prophet on the word of a woman." This shows that the *Sunnah* of the Holy Prophet (upon whom be Allah's peace) in the knowledge of Hadrat

Umar must be that such a woman is entitled to both maintenance and lodging. Furthermore in a tradition from Ibrāhīm Nakha'ī there is the explanation that Ḥaḍrat 'Umar rejecting the *Ḥadīth* of Fātimah bint-Qais, had said "I have heard the Holy Prophet (upon whom be Allah's peace) say that such a woman has a right to lodging as well as to maintenance." The first argument that Imām Abū Bakr al-Jaṣṣāṣ has given in his discussion of this question in his *Aḥkān al-Qur'an* is that Allah has explicitly said: "Divorce them for their prescribed waiting periods." This Divine Command also applies to that person who might have taken his wife back after divorcing her twice in the first instance, and now he is left with only one divorce to pronounce." His second argument is: "When the Holy Prophet (upon whom be peace) taught this method of pronouncing divorce that one should either pronounce divorce in such a period of purity in which one may not have had sexual intercourse, or in a state when the signs of a woman's being pregnant might have appeared. In this he did not make any distinction between the first, second, or final divorce. Therefore, the Divine Command, "Lodge them (in the waiting-period) where you yourselves live," will be regarded as relevant to every form of divorce." His third argument is: "The maintenance and lodging of the pregnant woman, whether divorced revocable or irrevocably, is binding on the husband, and in respect of the non-pregnant revocably divorced woman also both these rights are binding." This shows that the maintenance and lodging have not been made incumbent on the basis of pregnancy but because both are legally bound to stay in the husband's house. Now, if the same injunction be applicable to the irrevocably divorced non-pregnant woman also, there can be no reason why her lodging and maintenance should not be incumbent on the man divorcing her.

The second group says that the irrevocably divorced woman has a right to lodging but not to maintenance. This is the viewpoint of Sa'īd bin al-Musayyab, Sulaymān bin Yasār, 'Aṭā', Sha'bī, Anzālī, Lath and Abū 'Ubaid (may Allh bless them), and Imām Shāfi'ī and Imām Mālik also have adopted the same. But in *Mughnī al-Muḥtāj* a different viewpoint of Imām Shāfi'ī has been stated as will be explained below.

The third group say that the irrevocably divorced woman is neither entitled to lodging nor to maintenance. This is the viewpoint of Ḥasan Baṣrī, Ḥammād, Ibn Lāṭī, 'Amr bin Dīnār, Ṭa'ūs, Ishāq bin Rāḥawīh and Abū Thaur. Ibn Jarīr has cited this very viewpoint as of Ḥaḍrat Ibn, Abbas, Imām Aḥmad bin Hanbal and the Imāmiyah sect of the Shī'as also have adopted the same, and in *Mughnī al-Muḥtāj* the viewpoint of the Shāfi'is also has been stated to be this. "The woman who is passing her waiting-period on the basis of divorce has an obligatory right to lodging, whether she is pregnant or not, but for the woman who has been irrevocably divorced, it is not obligatory. And for the non-pregnant irrevocably divorced woman there is neither maintenance nor clothing." This

viewpoint in the first place is based on this verse of the Qur'an "You do not know Allah may after this bring about a situation (of reconciliation)" From this they conclude that this could be correct only about a revocably divorced woman, and not about an irrevocably divorced one. Therefore, the Command of lodging the divorced woman in the house is specifically applicable only to the revocably divorced woman. Their second reasoning is from the *Hadith* of Fāṭimah bint Qais, which has been reported in the collections of *Hadith* through many authentic channels.

Thus Fāṭimah bint-Qais al-Fihriyyah was one of the earliest Emigrants. She was esteemed for her wisdom and sagacity, and the consultative body of the Companions on the occasion of Hadrat 'Umar's martyrdom had met together at her house. She was first married to Abū 'Amr bin Hafs bin al-Mughīrah al-Makhzūmī after she was separated by him by three divorces, the Holy Prophet (upon whom be Allah's peace) married her to Hadrat Usāmah bin Zaid. According to reports, her husband, Abū 'Amr had pronounced two divorces on her. Then, when he was sent to Yaman along with Hadrat 'Alī, he also sent from there the third and final divorce. According to lodge her in the house during the waiting-period and maintain her, according to others, she herself had laid claim to maintenance and lodging. Whatever be the case, the husband's relatives refused to concede her claim. Thereupon she took her case to the Holy Prophet (upon whom be peace), and he gave the decision that she was neither entitled to maintenance nor to lodging. According to a tradition, the Holy Prophet said: "The husband is under obligation to provide maintenance and lodging to the woman only in case he had a right to return to her, but when he had no such right, she was neither entitled to maintenance nor to lodging." (Musnad Ahmad), Ṭabarānī and Nasa'ī also have related almost the same tradition, the concluding words of which are to the effect "But when she is not lawful for him until she marries another man than him, there is neither maintenance for her nor lodging." After giving this decision the Holy Prophet first commanded her to pass her waiting period in the house of 'Umm Sharīk and then told her to stay in the house of Ibn 'Umm Maktūm.

However, the arguments of those who have not accepted this *Hadith* are as follows:

In the first place, she had been commanded to leave the house of her husband's relatives because she was rude of tongue and they were fed up with her ill-temper. Sa'īd bin al-Musayyab says: "This lady by reporting her *Hadith* has misguided the people. The truth is that she was rude and impudent, that is why she was lodged in the house of Ibn 'Umm Maktūm." (Abu Da'ūd) In another tradition Sa'īd bin al-Musayyab is reported to have said: "She had been impudent and rude to her husband's relatives; that is why she was commanded to shift from that

house " (Al Jassās). Sulman bin Yasar says "Her expulsion from the house was because of her ill-temper " (Abū Da'ūd).

Secondly, her tradition was repudiated by Hadrat 'Umar at a time when many of the Companions were still living, and the matter could be fully investigated. Ibrāhīm Nakha'i says: "When this *Ḥadīth* of Fatimah reached Hadrat 'Umar, he said 'We cannot abandon a verse of the Book of Allah and a saying of the Messenger of Allah (upon whom be His peace) because of the saying of a woman, who seems to be conjecturing. I have myself heard the Holy Prophet (upon whom be peace) say that the woman who has been divorced irrevocably is entitled to both lodging and maintenance.'" (Al Jassās) Abū Ishāq says "I was sitting with Aswad bin Yazid in the mosque of Kufa, when Sha'bi made mention of the *Ḥadīth* of Fatimah bint-Qais. Hadrat Aswad thereupon threw pebbles at Sha'bi and said "When in the time of Hadrat 'Umar this tradition of Fatimah was brought to his notice, he said: 'We cannot cast off the Book of our Lord and the *Ṣunnah* of our Prophet on the strength of the tradition of a woman. Maybe she has forgotten. The woman has a right to maintenance as well as to lodging, for Allah says 'Do not turn them out of their houses'." This tradition has been reported in Muslim, Abū Da'ūd, Tirmidhi and Nasā'i with some variation in wording.

Thirdly, during the reign of Marwān when a dispute arose in respect of the irrevocably divorced woman, Hadrat 'Ā'ishah had subjected the tradition of Fatimah bint-Qais to severe criticism. Qāsim bin Muḥammad says "I asked Hadrat 'Ā'ishah 'Don't you know the incident concerning Fatimah?' She replied 'Better not mention the *Ḥadīth* of Fatimah'." (Bukhārī). The words of Hadrat 'Ā'ishah in the other tradition related by Bukhārī are to the effect, "What has happened to Fatimah? Is she not afraid of God?" In the third tradition Hadrat 'Urwah bin Zubair says that Hadrat 'Ā'ishah said: "There is no good for Fatimah in reporting this *ḥadīth*." In still another tradition Hadrat 'Urwah says that Hadrat 'Ā'ishah expressed great indignation against Fatimah and said "She in fact was in an empty house, where she had no sympathizer; therefore, for the sake of her convenience the Holy Prophet instructed her to change her house."

Fourthly, this lady was later married to Usāmah bin Zaid, and Muḥammad bin Usāmah says: "Whenever Fatimah made mention of this *Ḥadīth*, my father would throw at her whatever fell in his hand." (Al Jassās) Obviously, had not Hadrat Usāmah known that the *Ṣunnah* was contrary to what Fatimah said, he could not have felt so annoyed at the mention of this *Ḥadīth*."

7. There is complete consensus that whether the woman has been divorced revocably or irrevocably, her husband is responsible for her lodging and maintenance till child-birth if she is pregnant. However, a difference of opinion has arisen in case the husband of the pregnant woman may have died, irrespective

of whether he may have died after pronouncing the divorce, or May not have pronounced any divorce and the woman may have been widowed during pregnancy this regard, the jurists have expressed the following views

- (1) Hadrat 'Alī and Hadrat 'Abdullah bin Mas'ūd hold that she has an obligatory right to maintenance in the husband's undivided legacy. The same also has been cited as the view of Hadrat 'Abdullah bin 'Umar, Qādī Shura'h, Abul 'Altyah, Sha'bi and Ibrāhīm Nakha'ī, and a saying of Hadrat 'Abdullah bin 'Abbas also supports the same (Ālūsī, Al Jassās).
- (2) Ibn Jarir has cited another view of Hadrat 'Abdullah bin 'Abbas to the effect "If the deceased person has left some inheritance, expenditure should be made on her from the share of the child of her womb; and if he has left no inheritance, the heirs of the deceased should spend on her, for Allah says 'And the same responsibility for the maintenance of the mother devolves upon the heir' " (Al-Baqarah. 233).
- (3) Hadrat Jābir bin 'Abdullah, Hadrat 'Abdullah bin Zubair, Hadrat Hasan Basri, Hadrat Sa'id bin al Musayyab and Hadrat 'Atā' bin Abī Abī Rabāh say that there is no maintenance for her in the inheritance of the deceased husband. A third saying from Hadrat 'Abdullah bin 'Abbas also has been cited to be the same. (Al-Jassās) This means that she can meet her expenses from the share of inheritance that she may receive from the husband's legacy, but she has no right of inheritance on the husband's combined legacy, which may burden the other heirs.
- (4) Ibn Abī Laīla says: "Her maintenance in the deceased husband's legacy is as obligatory as is somebody's debt obligatory in his legacy " (Al-Jassās) That is, just as a debt has to be paid out of a combined legacy, so also should her maintenance be paid out of it.
- (5) Imām Abū Hanīfah, Imām Abū Yūsuf, Imām Muḥammad and Imām Zufar say: "She has neither any right to lodging in the deceased husband's legacy nor to maintenance, for nothing belongs to the deceased after death whatever remains after him belongs to the heirs. The widowed pregnant woman, therefore, cannot have any maintenance in their property " (Hedāyah; Al-Jassās). The same is the viewpoint of Imām Aḥmad bin Hanbal (Al-Iqfā').
- (6) Imām Shāfi'ī says: "There is no maintenance for her, but she has a right to lodging (Mughnī al-Mughnī)" His reasoning is based on the incident concerning Furā'ah bint-Mālik, sister of Hadrat Abū Sa'id Khudrī, when her husband was put to death, the Holy Prophet (upon whom be Allah's peace) commanded her to pass her waiting-period in the house of her husband (Abū Da'ūd, Nasa'ī, Tirmidhī). Furthermore, they deduce their

view from the tradition of Daraqutnī: "The Holy Prophet said: there is no maintenance for the widowed pregnant woman." The same is the view of Imām Mālik also. (*Ḥaṣṭiyah ad-Dusūqī*)

18. This Divine Command teaches several important things:

(1) That the woman is the owner of her milk; otherwise, obviously she could not be authorised to receive wages for it, (2) that as soon as she becomes free from the marriage bond with her previous husband at child-birth, she is not legally bound to nurse her child; but if the father desires that she nurse it, and she also is willing for it, she would suckle it and would be entitled to receive the wages; (3) that the father also is not legally bound to have the child suckled only by its mother; (4) that the maintenance of the child is the responsibility of the father; (5) that the mother is best entitled to suckle the child, and the other woman can be employed for suckling only in case the mother herself is not willing for it, or demands too high a wage for the father to pay. The sixth rule that automatically follows is that if the other woman also demands the same wages as the mother, then the mother's right is superior.

The following are the opinions of the jurists in this regard:

Ḍaḥḥāk says: "The child's mother is best entitled to suckle it, but she has the option to suckle it or not. However, if the child does not take to the new nurse-maid, the mother will be compelled to suckle it." A similar opinion is held by Qatādah, Ibrāhīm Nakha'ī and Sufyān Thaurī. Ibrāhīm Nakha'ī adds: "In case another woman is not available for nursing the child, the mother will be compelled to nurse it. (Ibn Jarīr).

According to *Ḥedāyah*: "If at the separation of the parents the child has not yet been weaned, it is not obligatory that the mother alone should suckle it. However, if another woman is not available, the mother would be compelled to suckle the child. And if the father says: I shall employ another woman to suckle the child on wages instead of having it suckled by the mother on wages, and if the mother demands the same wages as the other woman, or is willing to perform the service gratis, the mother's right will be regarded as superior. And if the child's mother demands higher wages, the father will not be compelled to accede to her demand."

19; This contains a severe rebuke both for the father and for the mother. The style clearly shows that if the two do not settle the question of the child's suckling amicably, overlooking the previous bitterness that led to divorce, it is not approved by Allah. The woman has been warned to the effect: "If you demand too high a wage only in order to embarrass the man, the fosterage of the child is not dependent on you alone: some other woman will nurse it." And the man also has

been warned as if to say: "It would be unfair if you pressed the mother unjustly only because she was the mother." In this connection, please also see Al-Baqarah: 233 for details.

20. Now, the Muslims are being warned of the fate they would meet in this world and in the Hereafter if they disobeyed the Commands they have been given through the Messenger of Allah and His Book and the rewards they would receive if they adopted obedience.

21. Some of the commentators opine that "Admonition here implies the Qur'an, and "Messenger" the Holy Prophet Muhammad (upon whom be Allah's peace and blessings); some others say that "Admonition" implies the Holy Prophet (upon whom be Allah's peace) himself, because he was admonition for the people through and through. We are of the opinion that this second interpretation is more correct, for according to the first commentary the sentence would read "We have sent down to you an Admonition and sent such a Messenger," obviously, there is no need for such an interpolation in the Qur'ānic passage when it is perfectly meaningful, even more so, without it.

22. "Out of darknesses into light": out of the darknesses of ignorance into the light of knowledge. The full significance of this Divine Saying becomes obvious only when one studies the other ancient and modern family laws of the world pertaining to divorce, waiting-period and provision of maintenance. This comparative study will show that in spite of the un-ending alterations, modifications and continual legislation no nation has been able so far to build for itself such a rational, natural and socially useful law as had been given by this Book and the Messenger who brought it 1500 years ago. It has never stood in need of revision nor it ever will. I here is no occasion here for a detailed comparative study of it; we have, however, given a brief specimen of it in the concluding portion of our book *Huquq az-Zawjain*; the scholars who are interested in the subject can for themselves compare the world's religious and secular laws with this law of the Qur'ān and *Sunnah*.

23. "Also their like— does not mean that He created as many earths as the heavens, but it means that He has also created several earths as He has created several heavens. "Of the earth"— mean that just as this earth, which is inhabited by man, is serving as bed and cradle for the creatures living on it, so has Allah made and set other earths also in the universe, which serve as beds and cradles for the creatures living on them. Moreover, there are clear pointers in the Qur'ān to the effect that living creatures are not found only on the earth but also in the heavens. (For instance, see *Ash-Shūrā*: 29 and E.N. 50 on it). In other words! the countless stars and planets seen in the sky are not all lying desolate, but like the earth there are many among them which are inhabited.

From among the earliest commentators Ibn 'Abbās is the one, who had expressed this truth in the period when man was not even prepared to imagine that in the universe there are other habitats also, apart from the earth, where rational creatures live. Even the scientists of today are yet in doubt about this being a reality, nothing to say of the people living 1500 years ago. That is why Ibn 'Abbās felt hesitant about whether he should say such a thing before the common people or not, because he feared it might affect their faith. Mujāhid says that when he was asked the meaning of this verse, he said: "If I give you the commentary of this verse, you will turn disbelievers, and your disbelief will be that you will deny it." Almost the same thing has been related from Sa'id bin Jubair, saying: "Ibn 'Abbās said: what can be the guarantee that if I tell you its meaning, you would not turn disbelievers?" (Ibn Jarir, 'Abd bin Humaid). However, Ibn Jarir, Ibn Abi Hatim, Hākim and Baihaqi in *Sbu'ab al-Iman* and *Kitāb al-Asmā' was-Sifāt* have cited, on the authority of Abud-Duhā, this 'commentary' from Ibn 'Abbās in different words: "In each of those earths there is a Prophet like your Prophet, an Adam like your Adam, a Noah like your Noah, an Abraham like your Abraham, and a Jesus like your Jesus." This tradition has been related by Ibn Hajar in *Fath al-Bari* and by Ibn Kathir in his Commentary, and Imām Dhahbi says: "It has been reported authentically, but in my knowledge none apart from Abud-Duhā has related it; therefore, it is an uncommon and rare tradition." Some other scholars regard it as a falsehood and Mullā 'Alī Qārī, in his *Mawdu'āt Kabīr* (p. 19), has described it as a fabrication, and written: "Even if it is a tradition from Ibn 'Abbās, it is based on Israelite traditions." But the truth is that the actual reason why the people have rejected it is their regarding it as remote from reason and beyond under-standing; otherwise there is nothing in it which may by itself be opposed to reason. Thus, 'Allāma Ālūsī in his discussion of it in his Commentary writes: "There is neither any intellectual barrier to taking it as correct nor religious. It only means that in every earth there is a creation which turns to its origin just as mankind in our earth turns to Adam (peace be upon him), and in every earth there are individuals, who are distinguished among others just as the Prophets Noah and Abraham (peace be upon them) are distinguished among us." A little below the 'Allāma writes: "The earths may be more than seven, and likewise the heavens also may not be only seven. To rest content with the number seven, which is an indivisible integer, does not necessarily negate the higher numbers." Then, about the distances between one heaven and another, which have been stated as five hundred years or so in some *Aḥādīth*, the 'Allāma says: "This is not meant to give the exact measurement of the distances, but to express the truth in a manner easily comprehensible to the people."

It would be interesting to note that lately the Rand Corporation of America have estimated on the basis of their astronomical observations that only in the

Galaxy to which our earth belongs there are about 600,000,000 (six hundred million) planets physical conditions on which closely resemble those on the earth, and there is a possibility that they may also be inhabited just as is the earth by living creatures. (*Economist*, London 26 July, 1969).